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September 5, 2013

Stephanie Vaughn
Lower Passaic River Restoration Project
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866

Via Electronic Mail

**Re: Notice of Force Majeure –
Bridge Street Bridge –Mechanical Failure
River Mile 10.9 Removal Action
CERCLA Docket No. 02-2012-2015**

Dear Ms. Vaughn:

This letter is submitted on behalf of the Lower Passaic River Cooperating Parties Group (CPG) to provide notice in accordance with Section XVII of the "Administrative Settlement Agreement and Order on Consent for Removal Action," captioned "In the Matter of Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site," CERCLA Docket No. 02-2012-2015 (AOC) that a Force Majeure event exists due to the fact that the Bridge Street Bridge (hereafter Bridge), which is located at River Mile (RM) 5.41 and connecting Newark and Harrison, is currently inoperative. As described in more detail below, on August 31, there was a major mechanical failure of the Bridge's gear assembly.

- In an email of 6:47 a.m. on August 31, Hudson County on behalf of Essex County (the joint operators of the Bridge) reported that, "[a]fter successfully opening for river traffic at 3:30 a.m. Saturday, operators were unable to close the [Bridge]." Operators reported hearing "unusual noises during the opening and suspect a faulty gear box." (Attachment 1).
- As a result of the gear assembly failure,) Hudson County provided notice to the CPG and its contractors that "UNTIL FURTHER NOTICE, BRIDGE STREET BRIDGE IS OUT OF SERVICE". (Attachment 1).
- Initial notice was provided to CDM (EPA's oversight contractor) on August 31. Written notice was provided via email to EPA on September 1 (Attachment 2)
- Subsequent communications between Hudson County and CPG representatives indicated that the Bridge would remain closed and not operated or be opened until repairs were completed in an estimated 4 weeks.
- As a result of Hudson County's inability to operate the Bridge, Great Lakes Dredge and Dock (CPG's contractor) filed a mariner's complaint with US Coast Guard (USCG) District Commander on September 3 due to Hudson County's refusal to open the Bridge on September 1 and 2. (Attachment 3)

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- On September 3, Hudson County provided an email to USCG stating that the Bridge was inoperative and that repairs would be completed in 30 days. (Attachment 4). It is the CPG's understanding that Hudson County did not submit a formal Notice to Mariners properly documenting the status and limitations of the Bridge.
- On September 4, USCG sent a letter (Attachment 5) to Hudson and Essex Counties stating that the:
 - Counties' plan and estimate schedule to return the Bridge to service in 30 days was unacceptable;
 - Counties are required to provide a description of actions to be taken, why the Bridge can not open, and the Counties' plan to accommodate bridge openings;
 - USCG noted that critical marine movements related to the RM 10.9 Removal Action are being delayed. The USCG stated that it is the Counties' obligation to develop and implement a solution to repair the Bridge or leave the Bridge in an open position to allow the passage of critical marine traffic; and,
 - The USCG directed the Counties provide a plan to provide all requested information and provide a plan to repair the Bridge within 2 days or face civil penalties.
- On September 4, Hudson County responded, via email, to USCG's letter. With respect to accommodating the RM 10.9 Removal Action, the email states that such accommodation is "only possible if the bridge is kept in the open position thereby closing the bridge to vehicular traffic" Any other method would "entail constant opening and closing of the bridge through either a winching procedure or tug boat operation thereby subjecting the bridge to further structural damage." (Attachment 6).
- On September 4, Hudson County issued a Declaration of Emergency describing the condition of the Bridge and that it intended to undertake repairs (Attachment 7).

The inoperative condition of the Bridge prevents the CPG and its contractors from transporting dredged sediment from the RM 10.9 Removal Area to the Clean Earth Facility on Hackensack River within the schedule agreed upon between USEPA and the CPG. The inoperable state of the Bridge is beyond the control of the CPG or its contractors, as the Bridge is owned and/or operated by Essex and Hudson Counties who are required under Federal Regulations to maintain the Bridge in an operable state and open the Bridge upon proper notice from mariners. The failure of the Bridge due to any maintenance issues, or lack thereof, by the Counties is completely beyond the control of the CPG.